

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HELEN FOSTER

Claimant

VS.

U.S.D. NO. 259

Respondent

Self-Insured

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Docket No. 216,150

ORDER

Respondent appeals from a January 24, 1997 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

Respondent contends the Administrative Law Judge exceeded her jurisdiction in authorizing a new treating physician without providing respondent the opportunity to select the authorized health care provider or permit respondent to provide claimant with a list of three health care providers from which to choose.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that it does not have jurisdiction to review the issue raised by respondent on an appeal from a preliminary hearing order.

The Appeals Board agrees with respondent that the facts of this case are more analogous to those presented to the Appeals Board in the case of Chilargi v. Braums, Inc., Docket No.198,309 (June 1996) than they are to the case of Drake v. Wilson County, Docket No. 192, 317 (July 1995) upon which claimant and the Administrative Law Judge relied. However, for the reasons set forth in the Appeals Board's Order in Briceno v. Wichita Inn West, Docket No. 211,226 (February 1997), the Appeals Board finds that the

Order entered by the Administrative Law Judge did not exceed her jurisdiction. Thus, the Appeals Board is without jurisdiction to review the issue raised by respondent at this stage of the proceeding.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal by respondent should be dismissed and the Order by Administrative Law Judge Nelsonna Potts Barnes dated January 24, 1997, should, and does, remain in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: William L. Townsley III, Wichita, KS
Robert G. Martin, Wichita, KS
Richard J. Liby, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director